

Oct 16, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

YVETTE E.¹,

Plaintiff,

v.

ANDREW M. SAUL, COMMISSIONER
OF SOCIAL SECURITY,²

Defendant.

No. 4:18-CV-5181-EFS

**ORDER DENYING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION
AND GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION**

Before the Court are the parties' cross summary-judgment motions. ECF Nos. 11 & 12. Plaintiff Yvette E. appeals a denial of benefits by the Administrative Law Judge (ALJ). She argues the ALJ erred by: 1) improperly weighing the opinions

¹ To protect the privacy of the social-security Plaintiff, the Court refers to her by first name and last initial or by "Plaintiff." See LCivR 5.2(c).

² Andrew M. Saul is now the Commissioner of the Social Security Administration. The Court substitutes Andrew M. Saul as the Defendant and directs the Clerk to update the docket sheet. See Fed. R. Civ. P. 25(d).

1 of her medical providers; 2) improperly determining that her impairments did not
2 meet or equal a listed impairment; 3) discounting Plaintiff's subjective symptom
3 testimony; and 4) improperly determining steps four and five based on an incomplete
4 hypothetical question to the vocational expert. In contrast, the Commissioner of
5 Social Security asks the Court to affirm the ALJ's decision finding Plaintiff not
6 disabled. After reviewing the record and relevant authority, the Court denies
7 Plaintiff's Motion for Summary Judgment, ECF No. 11, and grants the
8 Commissioner's Motion for Summary Judgment, ECF No. 12.

9 I. Five-Step Disability Determination

10 A five-step sequential evaluation process is used to determine whether an
11 adult claimant is disabled.³ Step one assesses whether the claimant is currently
12 engaged in a substantial gainful activity.⁴ If the claimant is, benefits are denied.⁵ If
13 not, the disability-evaluation proceeds to step two.⁶

14 Step two assesses whether the claimant has a medically severe impairment,
15 or combination of impairments, which significantly limit the claimant's physical or
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19 ³ 20 C.F.R. § 416.920.

20 ⁴ *Id.* § 416.920(a)(4)(i).

21 ⁵ *Id.* § 416.920(b).

22 ⁶ *Id.*
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1 mental ability to do basic work activities.⁷ If the claimant does not, benefits are
2 denied.⁸ If the claimant does, the disability-evaluation proceeds to step three.⁹

3 Step three compares the claimant's impairment to several recognized by the
4 Commissioner to be so severe as to preclude substantial gainful activity.¹⁰ If the
5 impairment meets or equals one of the listed impairments, the claimant is
6 conclusively presumed to be disabled.¹¹ If the impairment does not, the disability-
7 evaluation proceeds to step four.¹²

8 Step four assesses whether the impairment prevents the claimant from
9 performing work she performed in the past by determining the claimant's residual
10 functional capacity (RFC).¹³ If the claimant is able to perform her previous work,
11 benefits are denied.¹⁴ If the claimant cannot perform this work, the disability-
12 evaluation proceeds to step five.¹⁵

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14 ⁷ 20 C.F.R. § 416.920(a)(4)(ii).

15 ⁸ *Id.* § 416.920(c).

16 ⁹ *Id.*

17 ¹⁰ *Id.* §§ 416.920(a)(4)(iii), 416.920(d).

18 ¹¹ *Id.* § 416.920(d).

19 ¹² *Id.* § 416.920(e).

20 ¹³ *Id.* § 416.920(a)(4)(iv).

21 ¹⁴ *Id.*

22 ¹⁵ *Id.*

1 Step five, the final step, assesses whether the claimant can perform other
2 substantial gainful work—work that exists in significant numbers in the national
3 economy—in light of her RFC, age, education, and work experience.¹⁶ If so, benefits
4 are denied. If not, the claim is granted.¹⁷

5 The claimant has the initial burden of establishing entitlement to disability
6 benefits under steps one through four.¹⁸ At step five, the burden shifts to the
7 Commissioner to show that the claimant is not entitled to benefits.¹⁹

8 II. Factual and Procedural Summary

9 Plaintiff filed a Title XVI application on January 19, 2015, alleging a disability
10 onset date of October 13, 2013.²⁰ Her claim was denied initially and upon
11 reconsideration.²¹ A video hearing was held on August 21, 2017, before
12 Administrative Law Judge Jesse Shumway.²²

13 In denying Plaintiff's disability claim, the ALJ made the following findings:
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15 ¹⁶ 20 C.F.R. § 416.920(a)(4)(v), (g); *Kail v. Heckler*, 722 F.2d 1496, 1497–98 (9th Cir.
16 1984).

17 ¹⁷ 20 C.F.R. § 416.920(g).

18 ¹⁸ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

19 ¹⁹ *Id.*

20 ²⁰ AR 204-09.

21 ²¹ AR 114-17, 120-28, 132-42.

22 ²² AR 32-76.
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- Step one: Plaintiff had not engaged in substantial gainful activity since January 19, 2015, a date after the alleged onset date of October 13, 2013;
- Step two: Plaintiff had the following medically determinable severe impairments: unspecified bipolar disorder, attention deficit hyperactivity disorder (ADHD), and unspecified anxiety disorder;
- Step three: Plaintiff did not have an impairment or combination of impairments that met or medically equaled the severity of one of the listed impairments;
- RFC: Plaintiff had the residual functional capacity to perform a full range of work at all exertional levels, but Plaintiff could not perform at an assembly-line pace;
- Step four: Plaintiff was capable of performing past relevant work as a cashier II, department manager, and sales clerk; and alternatively,
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff was capable of performing work that existed in significant numbers in the national economy, such as final assembler, addresser/hand packager, and microfilm document preparer.²³

When assessing the medical-opinion evidence, the ALJ gave:

²³ AR 17-26.

- great weight to the opinions of 1) Marian Martin, Ph.D., the testifying reviewing medical expert; and 2) Dave Sanford, Ph.D., the reviewing medical evaluator for the state agency;
- partial weight to the evaluating opinion of Amy Dowell, M.D.;
- little weight to the opinion of Plaintiff's treating physician, Dr. Benjamin Gonzalez; and
- no weight to the opinions that predated Plaintiff's filing date, including the opinion of Dr. Carine Bauer, Psy.D.²⁴

The ALJ also found that Plaintiff's medically determinable impairments could reasonably be expected to cause some of the alleged symptoms but that her statements concerning the intensity, persistence, and limiting effects of those symptoms were not entirely consistent with the medical evidence and other evidence in the record.²⁵

Plaintiff requested review of the ALJ's decision by the Appeals Council, which denied review.²⁶ Plaintiff timely appealed to this Court.

²⁴ AR 22-23.

²⁵ AR 21-24.

²⁶ AR 1-6, 202-03.

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III. Standard of Review

A district court’s review of the Commissioner’s final decision is limited.²⁷ The Commissioner’s decision is set aside “only if it is not supported by substantial evidence or is based on legal error.”²⁸ Substantial evidence is “more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”²⁹ Moreover, because it is the role of the ALJ and not the Court to weigh conflicting evidence and make credibility assessments, the Court upholds the ALJ’s findings “if they are supported by inferences reasonably drawn from the record.”³⁰

Further, the Court may not reverse an ALJ decision due to a harmless error.³¹ An error is harmless “where it is inconsequential to the [ALJ’s] ultimate nondisability determination.”³² The party appealing the ALJ’s decision generally bears the burden of establishing harm.³³

²⁷ 42 U.S.C. § 405(g).

²⁸ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

²⁹ *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

³⁰ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

³¹ *Id.*

³² *Id.* at 1115 (quotation and citation omitted).

³³ *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

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Plaintiff challenges the ALJ's assignment of little weight to Dr. Gonzalez's opinion, partial weight to Dr. Dowell's opinion, and no weight to Dr. Bauer's opinion.

As discussed below, the Court finds Plaintiff failed to establish that the ALJ's weighing of the medical-opinion evidence was erroneous.

³⁷ *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

1 1. Dr. Gonzalez

2 Dr. Gonzalez treated Plaintiff from at least 2013 to 2017.³⁸ In July 2017, Dr.
3 Gonzalez completed a Mental Residual Functional Capacity Assessment on which
4 he opined that Plaintiff was:

- 5 • mildly limited in her abilities to accept instructions, respond
6 appropriately to criticism from supervisors, and travel in unfamiliar
7 places or use public transportation;
- 8 • moderately limited in her abilities to remember locations and work-
9 like procedures, carry out very short and simple instruction, perform
10 activities within a schedule, maintain regular attendance, be
11 punctual within customary tolerances, sustain an ordinary routine
12 without special supervision, make simple-work-related decisions,
13 complete a normal work-day and workweek without interruptions
14 from psychologically based symptoms and perform at a consistent
15 pace without an unreasonable number and length of rest periods,
16 interact appropriately with the general public, ask simple questions
17 or request assistance, get along with co-workers or peers without
18 distracting them or exhibiting behavioral extremes, maintain socially
19 appropriate behavior and adhere to basic standards of neatness and

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³⁸ See, e.g., AR 542-46, 604-09, 714, 718, 734, 737.

1 cleanliness, and be aware of normal hazards and take appropriate
2 precautions; and

- 3 • markedly limited in her abilities to understand and remember
4 detailed instructions, carry out detailed instructions, maintain
5 attention and concentration for extended periods, work in
6 coordination with or proximity to others without being distracted by
7 them, respond appropriately to changes in the work setting, and set
8 realistic goals or make plans independently of others.³⁹

9 As to Plaintiff's "B" criteria of mental listings, Dr. Gonzalez opined that
10 Plaintiff's ability to interact with others was mildly limited and abilities to
11 understand, remember, or apply information; concentrate, persist, or maintain pace;
12 and adapt or manage oneself were markedly limited.⁴⁰ In addition, Dr. Gonzalez
13 found that Plaintiff was likely to be off-task more than thirty percent of a normal
14 work week and be absent four or more days per month.⁴¹

15 The ALJ discounted Dr. Gonzalez's opinion because 1) he completed a check-
16 box form without providing any explanation for his opined selections; 2) it was not
17 supported by Dr. Gonzalez's treatment notes; 3) it was more limiting than the
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20 ³⁹ AR 743-44.

21 ⁴⁰ AR 745.

22 ⁴¹ AR 746.

1 opinions from other acceptable medical sources; and 4) it was inconsistent with the
2 longitudinal medical record.⁴²

3 First, the ALJ's finding that Dr. Gonzalez's check-box opinion was not
4 explained is a rational finding supported by substantial evidence as Dr. Gonzalez
5 did not include any explanation under the form's Comment section.⁴³

6 Second, the ALJ's finding that Dr. Gonzalez's treatment notes did not support
7 his opined restrictions is a rational finding supported by substantial evidence. The
8 treatment notes support the ALJ's finding that Plaintiff's "mood stabilized once she
9 was compliant with her medications and in remission of her substance abuse, and
10 she has remained stable from 2015 through" the ALJ's decision.⁴⁴ That Dr.

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12 ⁴² AR 23.

13 ⁴³ AR 746; *see Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir.
14 2009) (recognizing that a medical opinion may be rejected if it is conclusory or
15 inadequately supported).

16 ⁴⁴ AR 22 (citing AR 717-18; AR 721; AR 723 (noting mood stability on current
17 psychiatric medication, good insight and judgment, intact orientation, and linear
18 thought process); AR 725 ("The patient reports maintaining her mood stability,
19 focus, and attention on her current psychotropic medications."); AR 731 ("She has
20 not had any significant mood swings since her last appointment and taking her
21 medications regularly"); AR 733 (noting that Plaintiff was not taking her psychiatric
22 medications regularly and therefore her mood started getting worse)).
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1 Gonzalez's opined check-box restrictions were not supported by his treatment notes
2 was a clear and convincing reason to discount Dr. Gonzalez's opinion.⁴⁵

3 Third, the ALJ's finding that Dr. Gonzalez's more-limiting opinion was
4 inconsistent with the other medical opinions is rational and supported by substantial
5 evidence. Focusing on the examining opinions, the ALJ found the opinion of Dr.
6 Marian Martin, Ph.D., the impartial medical expert at the hearing, was supported
7 by the record and assigned great weight to Dr. Martin's opinion. Dr. Martin opined
8 that Plaintiff would not have any significant difficulty understanding, remembering,
9 or applying information; interacting with others; adapting or managing one's self,
10 but that she may have moderate difficulties with concentration, persistence, and
11 pace—but those symptoms were well-managed given Plaintiff's medication and
12 abstinence from drugs.⁴⁶ Dr. Martin only recommended a non-fast-pace-production
13 work limitation.⁴⁷

14 Similarly, examining physician Dr. Amy Dowell opined that Plaintiff would
15 have difficulty maintaining regular attendance because of her bipolar disorder if not
16 controlled with medication, but Dr. Dowell found that because Plaintiff's bipolar
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19 ⁴⁵ See *Bray*, 554 F.3d at 1228; *Crane v. Shalala*, 76 F.3d 251, 253 (9th Cir. 1996); see
20 also *Trevizo v. Berryhill*, 871 F.3d 664, 677 n.4 (9th Cir. 2017).

21 ⁴⁶ AR 46-53.

22 ⁴⁷ AR 47-48.

1 disorder was adequately controlled by medication, she could then-currently work.⁴⁸
2 As is discussed more, the ALJ incorporated Dr. Dowell's opinion that Plaintiff
3 required special or additional instructions due to her ADHD by restricting Plaintiff
4 to non-assembly-pace work. Dr. Dowell did not otherwise opine that Plaintiff's
5 functional abilities were limited.⁴⁹

6 In light of these examining opinions, that Dr. Gonzalez's more-limiting
7 opinion was inconsistent with the other medical opinions was a clear-and-convincing
8 reason to discount Dr. Gonzalez's opinion.

9 Finally, the ALJ's finding that Dr. Gonzalez's opinion was inconsistent with
10 the longitudinal medical record is rational and supported by substantial evidence.
11 As previously mentioned, Dr. Gonzalez's treatment notes spanning from 2013 to
12 2017 reflect that Plaintiff's conditions were stabilized when she took her medication
13 and abstained from drugs and were not as limiting as opined by Dr. Gonzalez.
14 Moreover, the ALJ rationally found that the record reflected that Plaintiff's mental-

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17 ⁴⁸ AR 661.

18 ⁴⁹ AR 661 (opining that Plaintiff was able to manage her funds; could perform simple
19 and repetitive tasks and detailed and complex tasks; could accept instructions from
20 supervisors; could interact with coworkers and the public; could complete a normal
21 workday/workweek without interruptions from a psychiatric condition; and could
22 deal with the usual stress encountered in the workplace).

1 health appointments were reduced from every 4-6 weeks to every 2-3 months.⁵⁰ That
2 the longitudinal medical record was inconsistent with Dr. Gonzalez's opinion was a
3 clear and convincing reason to discount the opinion.⁵¹

4 Plaintiff failed to establish that the ALJ erred by discounting Dr. Gonzalez's
5 opinion.

6 2. Dr. Dowell

7 In September 2015, Dr. Dowell conducted a mental-health evaluation of
8 Plaintiff.⁵² This evaluation included a mental-status examination and a review of
9 Plaintiff's March 2015 adult function report and treatment notes from Lourdes
10 Counseling Center dated December 24, 2014, January 13, 2015, and January 27,
11 2015. As discussed above, Dr. Dowell opined that Plaintiff was largely functional but
12 that she may have difficulty performing work activities on a consistent basis without
13 special or additional instructions due to her ADHD and may have difficulty
14 maintaining regular workplace attendance due to her bipolar disorder. But
15 ultimately Dr. Dowell opined that, because Plaintiff's bipolar disorder symptoms
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18 ⁵⁰ AR 23 (citing AR 714-39).

19 ⁵¹ See *Lingenfelter v. Astrue*, 504 F.3d 1028, 1042 (9th Cir. 2007) (recognizing that
20 the ALJ is to consider the consistency of the medical opinion with the record as a
21 whole).

22 ⁵² AR 657-61.
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1 were under control with treatment, she would not have attendance issues and could
2 work.⁵³

3 The ALJ assigned partial weight to Dr. Dowell's opinion and 1) highlighted
4 that Dr. Dowell noted that Plaintiff's bipolar disorder was well controlled with
5 medication and therefore not impairing Plaintiff's ability to work and thus the ALJ
6 found Dr. Dowell's opinion as to attendance issues speculative and not supported by
7 the longitudinal medical record; and 2) incorporated Dr. Dowell's opinion that
8 Plaintiff needed special or additional instructions because of her ADHD into the RFC
9 by limiting Plaintiff to non-assembly-line-pace work.⁵⁴ Plaintiff failed to establish
10 the ALJ erred by assigning partial weight to Dr. Dowell's opinion.

11 First, the ALJ's decision to discount Dr. Dowell's attendance-related opinion
12 is rational and supported by substantial evidence. As the ALJ noted, Dr. Dowell
13 herself indicated that Plaintiff's bipolar condition was not then impairing her ability
14 to work. Therefore, Dr. Dowell's opinion that Plaintiff may have attendance issues
15 in the future due to her bipolar disorder was speculative.⁵⁵ Moreover, the subsequent
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19 ⁵³ AR 661.

20 ⁵⁴ AR 21-22.

21 ⁵⁵ See *Coaty v. Colvin*, 673 Fed. Appx. 787, 788 (9th Cir. 2017) (affirming ALJ's
22 determination that medical opinion was speculative).
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1 medical record reflects that Plaintiff maintained mood stability.⁵⁶ This was a
2 legitimate and specific reason to discount Dr. Dowell's attendance-related opinion.

3 Second, while a different rational finding could be made as to whether the
4 RFC's non-assembly-line work limitation sufficiently incorporated Dr. Dowell's
5 opinion about Plaintiff's need for special or additional instructions due to her ADHD,
6 the ALJ's finding in this regard is a rational incorporation of this opined limitation.⁵⁷

7 On this record, the ALJ's assignment of partial weight to Dr. Dowell's opinion
8 is supported by substantial evidence.

9 3. Dr. Bauer

10 Dr. Bauer evaluated Plaintiff in 2014—before the filing of Plaintiff's instant
11 disability claim.⁵⁸ The ALJ gave no weight to Dr. Bauer's opinion because it was “of
12 little relevance to the time period at issue.”⁵⁹ Plaintiff argues the ALJ erred by failing
13 to consider Dr. Bauer's opinion, as Plaintiff's October 2015 disability claim should
14 have been treated as an implied request for reopening Plaintiff's prior disability
15 claim, which was denied on April 30, 2014. However, the decision whether to treat a
16 disability claim filed within twelve months of the Commissioner's denial of the prior
17 disability claim as an implied request for reopening of the prior disability claim lies
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19 ⁵⁶ AR 714-39.

20 ⁵⁷ See *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008).

21 ⁵⁸ AR 575-81.

22 ⁵⁹ AR 24.

1 with the ALJ. Because the ALJ specifically found that he was not “expressly or
2 implicitly reopen[ing] any prior application,” the ALJ’s denial to reopen is not subject
3 to this Court’s judicial review.⁶⁰ Moreover, the record reflects that Plaintiff’s mental-
4 health conditions were relatively stable since 2015.⁶¹

5 **B. Step Three: Listings**

6 Plaintiff contends the ALJ erred by finding that Plaintiff’s mental-health
7 impairments did not meet Listings 12.04, 12.06, 12.11, and 12.15, singly, or in
8 combination, based on Dr. Gonzalez’s opined marked limitations in the “B” criteria
9 and found “C” criteria. However, as discussed above, the ALJ rationally discounted
10 Dr. Gonzalez’s opinion, including the marked limitations and “C” criteria limitations.
11 Therefore, Plaintiff failed to establish that the ALJ erred at step three.

15 ⁶⁰ AR 24; *Lester v. Chater*, 81 F.3d 821, 827 (9th Cir. 1996) (recognizing that the
16 Commissioner’s decision to not reopen a disability claim is purely discretionary and
17 a discretionary decision is not a “final decision” and therefore is not subject to judicial
18 review).

19 ⁶¹ *Cf. Lewis v. Apfel*, 236 F.3d 503, 509-10 (9th Cir. 2001); HALLEX I-2-0-10, B.1.
20 (recognizing that the ALJ “[n]eed not make a finding on the issue of reopening the
21 determination or decision if issuing an unfavorable decision” if “the additional
22 evidence does not warrant reopening a prior determination or decision”).

1 **C. Plaintiff's Symptom Reports**

2 Plaintiff argues the ALJ failed to provide valid reasons for rejecting her
3 symptom reports.

4 In examining Plaintiff's symptom reports, the ALJ must make a two-step
5 inquiry. "First, the ALJ must determine whether there is objective medical evidence
6 of an underlying impairment which could reasonably be expected to produce the pain
7 or other symptoms alleged."⁶² Second, "[i]f the claimant meets the first test and there
8 is no evidence of malingering, the ALJ can only reject the claimant's testimony about
9 the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons'
10 for the rejection."⁶³

11 The ALJ found that Plaintiff's medically determinable impairments could
12 reasonably be expected to cause some of the alleged symptoms but that her
13 statements concerning the intensity, persistence, and limiting effects of those
14 symptoms were not entirely consistent with the evidence.⁶⁴ Specifically, the ALJ
15 found Plaintiff's symptom reports inconsistent with the objective medical evidence,
16 her course of treatment, and her work-related activities.

19 ⁶² *Molina*, 674 F.3d at 1112.

20 ⁶³ *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter*, 504
21 F.3d at 1036).

22 ⁶⁴ AR 21-24.

1 First, as to the ALJ's finding that Plaintiff's symptom reports were
2 inconsistent with the objective medical evidence, symptom reports cannot be solely
3 discounted on the grounds that they were not fully corroborated by the objective
4 medical evidence.⁶⁵ However, medical evidence is a relevant factor in considering the
5 severity of the reported symptoms. ⁶⁶ As discussed above, Dr. Gonzalez's treatment
6 notes, along with the longitudinal medical record, indicate that Plaintiff's mental
7 health was largely stable when she maintained sobriety and complied with her
8 medications, in contrast to Plaintiff's reported disabling symptoms. This was a
9 relevant factor for the ALJ to consider.

10 Second, the ALJ's finding that Plaintiff's reported symptoms were
11 inconsistent with her course of treatment was rational and supported by substantial
12 evidence. Dr. Dillon found that Plaintiff's bipolar disorder was stable in 2015.⁶⁷ In
13 addition, Dr. Gonzalez's treatment notes and other medical records support a finding
14 that Plaintiff's mental health was largely stable from 2013-2017 when she complied
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20 ⁶⁵ See *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).

21 ⁶⁶ *Id.*

22 ⁶⁷ AR 657-61.
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1 with her medications and abstained from substance abuse.⁶⁸ This was a clear and
2 convincing reason to discount Plaintiff's reported disabling symptoms.⁶⁹

3 Third, the ALJ's finding that Plaintiff's attempts to look for work, intermittent
4 work, and return to school were inconsistent with her reported symptoms is
5 rational—when considering these activities cumulatively—and is supported by
6 substantial evidence.⁷⁰ Although Plaintiff's work was short-term and did not
7 constitute substantial gainful employment, these cumulative activities rationally
8 support the ALJ's decision to discount Plaintiff's reported disabling symptoms.⁷¹

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10 ⁶⁸ AR 714-39.

11 ⁶⁹ *See Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599–600 (9th Cir. 1999)
12 (considering evidence of improvement).

13 ⁷⁰ AR 718 (working part-time as a receptionist), 725 (looking for a job), 734 (upcoming
14 job interview), 738 (working and encouraged by sister to go back to school), 728
15 (continuing to work); *see also* AR 723 (Dr. Gonzalez recommending that she look for
16 work); AR 714 (not working because boss was out of the country).

17 ⁷¹ *See Bray*, 554 F.3d at 1227 (rejecting the claimant's symptom testimony in part
18 because the claimant sought work during period of alleged disability); *see also*
19 *Woznick v. Colvin*, No. 6:15-cv-00111-AA, 2016 WL 1718363, at *4 (D. Or. Apr. 29,
20 2016) (finding the ALJ reasonably discredited the claimant's symptom testimony in
21 light of her efforts to seek work); *Lizarraga v. Colvin*, No. CV 14-9116-FFM, 2016
22 WL 1604704, at *4 (C.D. Cal. Apr. 21, 2016) (same).

1 In summary, Plaintiff failed to establish the ALJ erred by discounting
2 Plaintiff's symptom reports.

3 **D. Steps Four and Five**

4 Plaintiff argues the ALJ erred at steps four and five because the vocational
5 expert's testimony was based on an incomplete hypothetical that failed to include
6 the opined absenteeism and unproductivity limitations. Plaintiff's argument is based
7 entirely on her initial argument that the ALJ erred in considering the medical-
8 opinion evidence and Plaintiff's symptom reports. For the above-explained reasons,
9 the ALJ's consideration of the medical-opinion evidence and Plaintiff's symptom
10 reports were legally sufficient and supported by substantial evidence. The ALJ did
11 not err in assessing the RFC or finding Plaintiff capable of performing past work and
12 other work existing in the national economy.⁷²

13 **V. Conclusion**

14 Accordingly, IT IS HEREBY ORDERED:

15 1. The Clerk's Office is **directed to substitute** Andrew M. Saul as the
16 Defendant and update the docket sheet.

17 2. Plaintiff's Motion for Summary Judgment, **ECF No. 11**, is **DENIED**.
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⁷² See *Magallanes v. Bowen*, 881 F.2d 747, 756–57 (9th Cir. 1989) (holding it is proper
21 for the ALJ to limit a hypothetical to those restrictions supported by substantial
22 evidence in the record).
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1 **3.** Defendant's Motion for Summary Judgment, **ECF No. 12**, is
2 **GRANTED.**

3 **4.** The Clerk's Office shall enter **JUDGMENT** in favor of the Defendant.

4 **5.** The case shall be **CLOSED.**

5 **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and
6 provide copies to all counsel.

7 **DATED** this 15th day of October 2019.

8
9 s/Edward F. Shea

 EDWARD F. SHEA
10 Senior United States District Judge